

ORIGINAL

BEFORE THE ARIZONA CORPORATION



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2 **COMMISSIONERS**

3 SUSAN BITTER SMITH, CHAIRMAN
 4 BOB STUMP
 4 BOB BURNS
 5 DOUG LITTLE
 5 TOM FORESE

6 IN THE MATTER OF THE APPLICATION
 7 OF TRICO ELECTRIC COOPERATIVE,
 7 INC. FOR APPROVAL OF A NEW NET
 8 METERING TARIFF, A PARTIAL WAIVER
 8 OF THE COMMISSION'S NET METERING
 9 RULES AND A REVISED AVOIDED COST
 9 RATE IN THE COMPANY'S EXISTING
 10 NET METERING TARIFF.

DOCKET NO. E-01461A-15-0057

**STAFF'S RESPONSE BRIEF
 PURSUANT TO APRIL 16, 2015
 PROCEDURAL ORDER**

11
 12 The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission")
 13 hereby files its response brief discussing whether the actions requested under Trico Electric
 14 Cooperative, Inc.'s ("Trico" or "Company") February 26, 2015, Application in this docket should be
 15 considered in a rate case proceeding. As directed by an April 3, 2015, Procedural Order, the parties to
 16 this docket filed their initial briefs on April 10, 2015. An April 16, 2015, Procedural Order directed
 17 the parties to file any response briefs no later than April 30, 2015.

18 **I. BACKGROUND.**

19 On February 26, 2015, Trico filed an Application ("Application") with the Commission for
 20 (1) approval of a new net metering tariff for future net metered Members; (2) approval of a partial
 21 waiver of the Commission's net metering rules; and (3) approval of a revised avoided cost rate in
 22 Trico's existing net metering tariff. On March 11, 2015, Trico filed a request for a procedural order
 23 ("Request") in connection with its Application. On March 19, 2015, Staff filed a Response to Trico's
 24 Request, in which Staff argued that Trico's requested relief would be more appropriately addressed in

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1 a rate case.¹ Staff suggested that Trico should voluntarily withdraw all but the avoided cost portion
2 of its Application.² Lastly, Staff suggested that the Commission should schedule an evidentiary
3 hearing if the Application is not withdrawn.³

4 On March 26, 2015, Trico filed a reply to Staff's Response. In its reply, Trico indicated that
5 it would not withdraw any part of its Application; however, it no longer objected to a hearing, so long
6 as it is not conducted in "conjunction with hearings on any other similar applications."⁴ On April 2,
7 2015, the presiding administrative law judge ("ALJ") conducted a procedural conference, and on
8 April 3, 2015, issued the Procedural Order referenced above.

9 Eight of the parties filed initial briefs in response to the ALJ's April 3, 2015, Procedural
10 Order.⁵ Several parties argued that Trico's Application can be considered outside of a rate case.
11 Trico asserted that "[n]either the consideration of Trico's proposed net metering tariff for future
12 distributed generation ("DG") members nor the updating of the avoided cost in the current net
13 metering tariff must be considered or approved in a rate case."⁶ Navopache Electric Cooperative,
14 Inc. and Mohave Electric Cooperative, Inc. joined in Trico's brief and concluded that Trico's
15 requested changes to its Net Metering Tariff can be considered and implemented outside of a full rate
16 case.⁷ Similarly, Tucson Electric Power Company ("TEP") and UNS Electric, Inc. indicated that
17 Trico's Application should proceed to an evidentiary hearing as there is no legal reason why the
18 application needs to be addressed in conjunction with a rate case.⁸ Robert Hall stated that Trico's
19 Application in its entirety should be heard now, and not postponed to a later hearing time in an
20 ensuing rate case.⁹

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23 ¹ Staff Rsp. to Req. at 3:15-17.

24 ² *Id.* at 4:5-7.

25 ³ *Id.* at 5:2-4.

26 ⁴ Trico Reply Req. at 1:15-19.

27 ⁵ Tucson Electric Power and UNS Electric filed comments on April 10, which was prior to being
28 granted intervention.

⁶ Trico's Br. at 1.

⁷ Navopache, Mohave Br. at 2.

⁸ TEP and UNS Electric Br. at 1.

⁹ Hall Br. at 1.

1 Other parties argued that the issues raised in Trico's Application either must be or should be
2 considered in a full rate case. Staff and the Arizona Solar Deployment Alliance ("ASDA") argue that
3 these issues should be addressed in a rate case.¹⁰ TASC asserts that all of these issues *must* be
4 addressed in a rate case and that to do otherwise would be single issue rate making.¹¹ As discussed
5 further below, Staff believes that these issues could be addressed outside of a rate case, but that the
6 Commission will have more tools at its disposal to address these issues in a rate case. Staff's
7 position remains that the Commission can, and should, dismiss Trico's Application, without
8 prejudice, and address these issues in Trico's next rate case.

9 **II. PROCESSING TRICO'S APPLICATION OUTSIDE A RATE CASE MAY IMPEDE**
10 **THE COMMISSION'S ABILITY TO ADOPT A COMPREHENSIVE SOLUTION TO**
11 **THE ISSUES RAISED BY TRICO'S APPLICATION.**

12 **A. Trico's Application Is Not Designed To Adequately Address The Alleged Under-**
13 **Recovery Of Fixed Costs Or The Alleged Cost Shift.**

14 As Trico specifically noted in its Application, it intends to file a general rate case application
15 "in the near future."¹² Trico anticipates that it will propose rate design changes to further address its
16 alleged unrecovered fixed costs. Trico's stated plans to seek general rate relief provide ample reason
17 for the Commission to dismiss Trico's Application, without prejudice for the consideration of these
18 issues in Trico's upcoming rate case.

19 Trico asserts in its Application that it has experienced a substantial increase in the number of
20 customers installing rooftop solar photovoltaic ("PV") systems.¹³ Trico further claims that there has
21 been a resulting decline in its sales of kWhs and a corresponding increase in unrecovered fixed
22 costs.¹⁴ However, Trico's requested relief—grandfathering existing solar customers—is unlikely to
23 address any *existing levels* of under-recovery of fixed costs.¹⁵ If granted, it appears that this would
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25 ¹⁰ ASDA Br. at 1-2; Staff Br. at 3.

26 ¹¹ TASC Br. at 3-4.

27 ¹² Trico App. at 8.

28 ¹³ *Id.* at 2:8-9.

¹⁴ *Id.*

¹⁵ *Id.* at 7.

1 merely hold constant any *existing* under-recovery of fixed costs. Trico has acknowledged this
2 possibility in its brief:

3 The proposed net metering tariff is intended to *slow the erosion of—but not increase—*
4 Trico’s revenues. Even with the proposed net metering tariff, Trico will *continue to*
5 *suffer a significant erosion of its revenue and rate of return—just not as severe.*¹⁶

6 In short, the relief sought by Trico is not likely to provide a direct solution to the problems
7 identified in Trico’s Application. Staff believes that these issues can be successfully addressed by a
8 re-evaluation of Trico’s rate design, an endeavor that is best suited to a comprehensive rate case. A
9 tariff filing, which is the vehicle that Trico attempts to use in this Application, is ill-suited to the
10 issues presented.

11 **B. Trico’s Under Recovery Of Fixed Costs Is Fundamentally A Rate Design Issue.**

12 There are multiple solutions to the issues raised by Trico in its Application. In its initial brief,
13 Staff addressed some possible rate design solutions that the Commission may wish to consider.
14 Ultimately, the under-recovery of fixed costs is a rate-design issue that is best handled in a full rate
15 case. In such a proceeding, the parties can offer evidence in support of various solutions, and the
16 Commission can evaluate the information with the benefit of a full record. In contrast, the tariff
17 application that Trico has filed may foreclose the Commission from considering the full range of
18 potential solutions to these difficult issues. Staff submits that this result is not in the broader public
19 interest, which would be better served by considering these issues comprehensively in a general rate
20 case.

21 Trico’s initial brief does not refute this fundamental Staff argument, and indeed, it actually
22 confirms Staff’s position. Trico discusses how the increase in the number of DG systems and net
23 metering has rapidly increased the amount of Trico’s unrecovered fixed costs.¹⁷ However, most
24 tellingly, Trico states that the level of unrecovered fixed costs will continue to increase for the
25 foreseeable future “absent some fundamental change *in either Trico’s rate design or its net metering*
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27 ¹⁶ Trico Br. at 4:5-8 (emphasis added).

28 ¹⁷ *Id.* at 2-3.

1 tariff.”¹⁸ While Staff agrees with Trico that a rate design change is needed to address Trico’s alleged
2 under-recovery of fixed costs, this remedy is best accomplished in a general rate case.

3 Trico has stated that it already plans to file a rate case in the near future. It would be
4 inefficient to address the issues raised by Trico’s Application twice, *i.e.*, in this pending proceeding
5 and then again in the subsequent rate case. Under these circumstances, Trico’s Application should be
6 dismissed, without prejudice, in order to consider of these issues in its upcoming rate case.

7 **C. The Commission Has The Discretion To Determine How To Process Trico’s**
8 **Application.**

9 Trico points out that its “net metering tariff was approved outside of a rate case... and that
10 [t]he Commission has modified the avoided cost rate in net metering tariffs numerous times for
11 several different utilities. These modifications have not been done in a rate case.”¹⁹

12 However, long-standing Arizona law confirms the broad scope of the Commission’s rate
13 making authority. In *Simms v. Round Valley Light & Power Company*, the Arizona Supreme Court
14 considered the scope of the Commission’s rate-making authority, and concluded that the Commission
15 possesses significant discretion:

16 The Commission, in exercising its rate-making power, of necessity has a *range of*
17 *legislative discretion* and so long as that discretion is not abused, the court cannot
substitute its judgment as to what is fair value or a just and reasonable rate.²⁰

18 The Commission has the constitutional authority and power to determine the best method of
19 processing a case that involves a change in rates. The Company’s Application cannot limit the scope
20 of the Commission’s power and discretion.

21 **III. ALTHOUGH THESE ISSUES ARE BETTER-SUITED TO A RATE CASE, THE**
22 **COMMISSION IS NOT PRECLUDED FROM PROCESSING TRICO’S**
APPLICATION AS A TARIFF FILING.

23 Staff recommends that the Commission dismiss Trico’s Application because the issues raised
24 therein *should* be addressed in a rate case. However, Staff disagrees with TASC’s suggestions that
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26 ¹⁸ *Id.* at 3:14-16 (emphasis added).

27 ¹⁹ Trico Br. At 3, 4.

28 ²⁰ *Simms*, 80 Ariz. 145, 294 P.2d 378 (1956) (emphasis added); *see also Ethington v. Wright*, 66 Ariz.
382, 189 P.2d 209 (1948).

1 the Commission is *precluded* as a matter of law from processing Trico's present Application as a
2 tariff filing. TASC argues that the Commission is precluded from doing so by the doctrine of "single
3 issue ratemaking" and that a full rate case is necessary whenever the Commission sets rates. TASC
4 cites *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 578 P.2d 612 (App. 1978), in support of this
5 argument. The holding in *Scates*, however, is much more narrow. That case criticized the
6 Commission for increasing rates without any consideration of fair value rate base:

7 We . . . hold that the Commission was without authority to increase the rate without
8 any consideration of the overall impact of that rate increase upon the return of . . . [the
9 utility], and without, as specifically required by our law, a determination of . . . [the
utility's] rate base.²¹

10 The *Scates* Court determined that the Commission had violated Arizona's constitutional provisions
11 regarding ratemaking by setting rates without any consideration of the utility's rate base and without
12 any inquiry into the effect of the increase upon the utility's rate of return.

13 The Court, however, carefully made clear that a full rate case is not required for every rate
14 change. As the Court specifically stated,

15 [t]here may be exceptional situations in which the Commission may authorize partial
16 rate increases without requiring entirely new submissions. We do not decide in this
17 case, for example, whether the Commission could have referred to previous
submissions with some updating or whether it could have accepted summary financial
information.²²

18 In short, Arizona cases establish that, subject to certain exceptions, the Commission is
19 required to consider the "fair value" of a Company's rate base whenever it changes rates.²³ The
20 requirement to determine fair value, however, is *not* the same as requiring a full rate case.²⁴ In
21 Decision No. 74202, the Commission stated that "*Scates* does not require a full rate case every time
22 the Commission changes rates; instead, it merely requires the Commission to ascertain the utility's
23 fair value and to consider the impact upon the utility's rate of return."²⁵

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25 ²¹ *Scates* 118 at 537, 578 P.2d at 618.

26 ²² *Id.* at 537, 578 P.2d at 618.

27 ²³ See *US West Commc'n, Inc. v. Ariz. Corp. Comm'n*, 201 Ariz. 242, 34 P.3d 351 (2001); *Simms*, 80
Ariz. at 151, 294 P.2d at 382.

28 ²⁴ See, e.g., Decision No. 74202 at 26-27.

²⁵ Decision No. 74202 at 26.

1 Ultimately, the Commission's ratemaking authority is plenary.²⁶ Staff believes that Trico's
2 Application could be processed in a way that would satisfy any applicable constitutional
3 requirements. However, Staff believes that the public interest would be better served by addressing
4 these issues in a full rate case. Staff therefore recommends that the Commission dismiss Trico's
5 Application, without prejudice, and address these issues in Trico's next general rate case.

6 **IV. CONCLUSION.**

7 Based upon the foregoing, and the arguments presented in its Opening Brief, Staff believes
8 that the Commission should dismiss Trico's Application. without prejudice, and address these issues
9 in Trico's next rate case. If the Commission chooses to address these issues in this Application, an
10 evidentiary hearing should be held, with notice and opportunity to intervene. Staff believes that the
11 avoided cost portion of the Application may be processed without a hearing unless there are factual
12 issues in dispute. If there are factual issues in dispute, then this portion of the Application should be
13 set for hearing.

14 RESPECTFULLY SUBMITTED this 30th day of April, 2015.

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28 ²⁶ See *Ariz. Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 830 P.2d 807 (1992).

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2 the foregoing filed this 30th day of
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